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16 NKM CAPITAL GROUP, LLC and GUY

17 KOREN, and Defendants J & K AMERICANA,

18 LLC, J&K LAKEWOOD, LLC, J&K

19 OAKRIDGE, LLC, J&K VALLEY FAIR, LLC, J

20 & K ONTARIO, LLC, J&K PC TRUCKS, LLC,

21 HLK MILPITAS, LLC, and GK CERRITOS, LLC

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

15 SHAKEY'S PIZZA ASIA VENTURES,
16 INC, a Philippines corporation,

17 Plaintiff,

18 vs.

19 PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING , LLC, a
20 Delaware limited liability company; GUY
KOREN, an individual; POTATO CORNER
LA GROUP, LLC, a California limited
21 liability company; NKM CAPITAL GROUP,
LLC, a California limited liability company;
J & K AMERICANA, LLC, a California
22 limited liability company; J&K
LAKEWOOD, LLC, a California limited
liability company; J&K VALLEY FAIR,
LLC, a California limited liability company;
J & K ONTARIO, LLC, a California limited
23 liability company; HLK MILPITAS, LLC, a
California, limited liability company; GK
CERRITOS, LLC, a California, limited
24 liability company; J&K PC TRUCKS, LLC,
a California limited liability company; and,
GK CAPITAL GROUP, LLC, a California

Case No. 2:24-CV-04546-SB(AGRx)

Hon. Stanley Blumenfeld, Jr.

**THE PCJV USA PARTIES'
OBJECTIONS TO THE REPORT
& RECOMMENDATION RE:
MOTION FOR SANCTIONS
(DKT. NO. 205-1)**

Complaint Filed: May 31, 2024

Trial Date: August 18, 2025

1 limited liability company and DOES 1
2 through 100, inclusive,

3
4 Defendants.
5

6
7 PCJV USA, LLC, a Delaware limited
8 liability company; PCI TRADING LLC, a
9 Delaware limited liability company;
10 POTATO CORNER LA GROUP LLC, a
11 California limited liability company; GK
12 CAPITAL GROUP, LLC, a California
13 limited liability company; NKM CAPITAL
14 GROUP LLC, a California limited liability
15 company; and GUY KOREN, an individual,

16 Counter-Claimants,
17
18 v.
19

20 SHAKEY'S PIZZA ASIA VENTURES,
21 INC, a Philippines corporation,
22
23 Counter Defendant.

24
25 PCJV USA, LLC, a Delaware limited
26 liability company; PCI TRADING LLC, a
27 Delaware limited liability company;
28 POTATO CORNER LA GROUP LLC, a
1 California limited liability company; GK
2 CAPITAL GROUP, LLC, a California
3 limited liability company; NKM CAPITAL
4 GROUP LLC, a California limited liability
5 company; and GUY KOREN, an individual,

6
7 Third Party Plaintiffs,
8
9 v.
10

11 PC INTERNATIONAL PTE LTD., a
12 Singapore business entity; Plaintiff
13 INTERNATIONAL USA, INC., a California
14 corporation; CINCO CORPORATION, a
15 Philippines corporation; and ROES 1 through
16 10, inclusive,
17
18

19 Third Party Defendants.
20
21

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Rules

Rule 26	passim
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1 Defendants, Counterclaimants, and Third Party Plaintiffs (“PCJV USA
2 Parties”) object to the Report & Recommendation (“R&R”) and request *de novo*
3 review of their motion for sanctions. PCJV USA Parties do not believe that the R&R’s
4 recommended remedies would correct the grave injustices caused here.

5 **I. PCJV USA PARTIES’ OBJECTIONS TO THE R&R**

6 **A. Objections re: Foundational Facts & Reported Background**

7 **1. Objections re: Timing of Motion & Alleged Impossibility**

8 PCJV USA Parties object that the R&R begins its analysis “two days before the
9 fact discovery cut-off date of March 14, 2025” (Dkt. No. 205-1 at 2), then, rather than
10 fault *Plaintiff* for failing to comply with discovery, the R&R appears to fault PCJV
11 USA Parties for “sit[ting] back, wait[ing] until the last minute, then complain[ing] it
12 is prejudiced because the other side should have produced documents sooner” (*id.* at
13 15).¹ That is an unfair description of what occurred. Rather, the record shows that
14 PCJV USA Parties were diligent at all times, including requesting the transactional-
15 based documents four days after this lawsuit was filed followed up with formal
16 document demands served in early December 2024 before responsive pleadings were
17 filed. PCJV USA Parties should not be faulted for *Plaintiff’s* failure to comply.

18 Plaintiff’s effort to justify its non-compliance with its discovery obligations,
19 which culminated in the March 12 Order, and the recommendation to deny PCJV
20 USA Parties’ motion for sanctions on the grounds of “impossibility,” Dkt. No. 205-1
21 at 14, miss the mark. Under settled authority,² a party cannot claim “impossibility”

22

23 ¹ Similarly, PCJV USA Parties object to R&R’s comment that “counsel should not
24 wait until the last minute to request court intervention in discovery disputes, as
happened in this case,” Dkt. No. 205-1 at 7, as this remark is made out-of-context and
without consideration of what actually caused delay.

25 ² See *Cortez v. Best Buy Stores, LP*, CV 11-05053 SJO (PLAx), 2011 WL 13238983,
26 at *3 (C.D. Cal. Oct. 28, 2011) (refusing to set aside a Magistrate Judge’s Order on
the grounds of impossibility when the defendant previously stated it could comply
with the order); see also *S. Cal. Darts Assoc. v. S. Cal. Darts Assoc., Inc.*, No.
27 CV1201899RGK, 2012 WL 12882764, at *1 (C.D. Cal. June 22, 2012)
28 (“impossibility of compliance cannot serve as a defense when the impossibility is the

1 where, as here, compliance was neither impossible (Plaintiff had over a year to gather
2 and produce case-in-chief documents as well 30 days to gather and produce other
3 compelled documents by the April 11 deadline and another 77 days from March 12
4 to June 27 to complete its production) nor when the non-compliant party's allegation
5 is based on a circumstance of its own making (Plaintiff's failure to seek review or
6 reconsideration of the April 11 deadline and discovery obligations or a trial
7 continuance in March or April, as directed and required by the CMO).

8 PCJV USA Parties' objection is not just that "SPAVI should have anticipated
9 the need to produce the documents that are the subject of the March 12, 2025 Order
10 long ago," Dkt. No. 205-1 at 14, but also that Rule 26 precludes a party from engaging
11 in trial by ambush and obligates a party to produce documents requested in discovery
12 that fall within its initial disclosures, *i.e.*, documents that it might use at trial to meet
13 its burden of proof.³ PCJV USA Parties seek appropriate relief for Plaintiff's decision
14 to suppress evidence in violation of Rule 26 and court orders.

15 Plaintiff undisputedly became obligated under Rule 26 to produce all responsive
16 documents put at issue by January 2025. And the Magistrate Judge made quick work
17 of Plaintiff's relevancy, privacy and disproportionality objections when the Court
18 granted PCJV USA Parties' motion and compelled the production of all documents
19 responsive to Plaintiff's Requests for Production of Documents ("RFP"), Set One,
20 inclusive of "RFP Nos. 1 to 20" and a "privilege log," with specific and limited carve-
21 outs, limitations or directions as to numbered requests, beginning "the week of March
22 24, 2025" and completing "by April 11, 2025" after counsel "promptly file a
23 stipulation for a protective order by March 14, 2025." Dkt. No. 128 at 1-3.

24
25 _____
26 intended result of the non-moving party's actions"); *National Urban League v. Ross*,
Case No. 20-CV-05799-LHK, 2020 WL 5578931, at *8 (N.D. Cal. Sept. 17, 2020).

27 ³The R&R fails to distinguish (a) documents that fall within Plaintiff's initial
28 disclosures, including referenced in its pleadings, from (b) documents Defendants
requested so as to prosecute their claims and discover impeachment evidence.

1 Plaintiff did not challenge the March 12 Order, thereby disposing of any
2 objections to discovery.⁴ The lone remaining issue was Plaintiff's non-compliance
3 with its Rule 26 obligations as specified in the plain language of the March 12 Order.

4 The timing of Plaintiff's production was based on answers provided when "the
5 court questioned counsel at the discovery conference." Dkt. No. 205-1 at 2. Plaintiff's
6 counsel had already circulated a protective order, which PCJV USA Parties' counsel
7 had already approved, and Plaintiff's counsel represented he had already gathered
8 documents he was then prepared to produce and 30 days should be sufficient to
9 complete production. Dkt. No. 153-2 ¶¶ 11-13, 15-16. To ensure no unfairness, the
10 Court set a further hearing on April 4, 2025,⁵ at which the Court set a briefing schedule
11 on a motion for sanctions. Dkt. No. 138, 141.

12 As to compliance, PCJV USA Parties' motion (Dkt. No. 153) established that
13 (a) Plaintiff became obligated in January 2025 to produce documents, and (b)
14 Plaintiff's attempt at justifying its failure to produce a single document was based on
15 its request for a trial continuance; Plaintiff was purposefully delaying producing
16 documents to force a trial continuance. Moreover, regardless of whether the March
17 12 conference occurred early or late relative to pleadings or deadlines, the ordered
18 April 11 deadline gave Plaintiff an entire month to produce, before the close of
19 discovery, documents that it had not already gathered and produced the week of
20 March 24. The April 4 order also provided a mechanism for relief from the April 11

21
22 ⁴ *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996) ("[A] party
23 who fails to file timely objections to a magistrate judge's non[-]dispositive order with
the district judge to whom the case is assigned forfeits its right to appellate review of
that order"); L.R. 72-2.1 (objections to pre-trial non-dispositive rulings from
Magistrate Judges must be asserted within fourteen days of a written ruling).

24
25 ⁵ The original purpose of the April 4, 2025 conference was to hear PCJV USA Parties'
26 objections, if any, to the search terms and records custodians Plaintiff had used or was
27 using to gather and produce responsive documents—all of which related to a singular
transaction put at issue in Plaintiff's pleadings and parsed into document requests to
avoid any particularity or disproportionality concerns. The original purpose of the
April 4 hearing became moot when, in violation of the March 12 Order, Plaintiff did
not begin a rolling production the week of March 24 and did not proffer search terms
and records custodians as ordered, *i.e.*, before April 4. Dkt. No. 153-2 ¶ 16.

1 deadline if Plaintiff had substantially complied with the March 12 Order and showed
2 good cause in accordance with the briefing schedule.

3 The R&R omits material facts as to Plaintiff's failure to comply not only with
4 its discovery obligations in January 2025, but also with the March 12 Order by April
5 11, 2025, which was a predicate for relief from the April 11 deadline. Plaintiff did
6 not: (a) file the approved protective order by March 14, (b) begin a rolling production
7 of documents as promised and ordered the week of March 24, (c) circulate any search
8 terms or record custodians by April 4, or (d) produce any documents by April 11. It
9 also (e) violated the April 4 briefing schedule, and (f) did not move for reconsideration
10 or show good cause or substantial compliance with the March 12 Order by April 11,
11 let alone at all. PCJV USA Parties' objections to the R&R's factual background and
12 omission of material facts should be sustained for the following reasons:

13 **a. Plaintiff Intentionally Suppressed Evidence**

14 Rule 26 was promulgated to prevent unfair surprise at trial. *Ollier v. Sweetwater*
15 *Union High School Dist.*, 768 F.3d 843, 862 (9th Cir. 2014). To this end, Rule 26
16 requires the initial disclosure of documents as well as the production of requested
17 documents a party might use at trial in support of a claim or defense where it bears
18 the burden of proof. *See Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101,
19 1105-07 (9th Cir. 2001) (“Rule 37(c)(1) gives teeth to these requirements by
20 forbidding the use at trial of any information required to be disclosed by Rule 26(a)
21 that is not properly disclosed”). There is no basis to refuse to produce a requested
22 document put at issue by a pleading or in a declaration or that falls within Rule 26
23 disclosure requirements. *Id.* at 1105-07 (affirming sanction for failure to produce
24 expert report until approximately month before trial).

i. Plaintiff Expressly Put Transaction Documents at Issue in Its Complaint; They Were Specifically Requested Four Days Later; And They Were Responsive to Timely Discovery Requests

At issue in this trademark case is not whose name is published on a registration certificate—it is who has a superior right to use or control the marks—including at common law and/or by written agreement. Valid ownership is a threshold issue, but just one element of Plaintiff’s case-in-chief that Plaintiff’s and PCJV USA Parties’ respective agreements with the original foreign rights holder inform. Guy Koren and his LA Group—who built the fast-food restaurant franchise through which the Potato Corner marks expanded to the U.S.—originally co-owned PCJV (the joint-venture limited-liability-company U.S. franchisor and first continuous and exclusive user of the U.S. marks) with the original registrant. Plaintiff’s proffered assignment does not substantiate that Cinco sold a superior claim to ownership to Plaintiff.

Even if it could prove a superior claim to ownership, Plaintiff would still have to prove it acquired the right to terminate PCJV’s agreed-upon right to use the marks, including to license them to franchisees, “at-will,” thereby (a) ending restaurant franchise business its partners created, and (b) disrupting PCJV’s relationships with U.S. franchisees. Just four days after Plaintiff filed its Complaint, PCJV USA Parties’ counsel addressed the need for “all of the Shakey’s Pizza Asia-Cinco transactional documents” and why. (*See* Exh. A to Dkt. No. 203-1.) The need for the transactional documents was raised time after time, including in written discovery requests. Plaintiff became obligated to produce them by at least January 2025, all of which bore on the alleged source of Plaintiff’s alleged IP rights.

ii. Plaintiff Put Due Diligence Documents at Issue When Declarants Testified in Support of the Preliminary Injunction, and They Were Responsive to Timely Discovery Requests

In support of Plaintiff's motion for a preliminary injunction, Plaintiff submitted evidence showing it conducted due diligence before announcing its transaction with Cinco in December 2021. *See* Dkt. No. 44-4 ¶ 22; Dkt. No. 44-5 ¶¶ 14-25. Plaintiff's

1 First Amended Complaint (at ¶¶ 73-77) alleges that in the state court action, Cinco
2 and Plaintiff (as a person in active concert or participation) were enjoined from
3 interfering from PCJV's franchise business and communicating with PCJV's
4 franchisees (regarding an alleged right to terminate use of the marks). Although not
5 involved in the preliminary injunction proceedings, the Magistrate Judge was
6 informed of Plaintiff's preliminary injunction declarations and was not surprised in
7 March, April or June to hear that Plaintiff had put due diligence at issue given that the
8 alleged transaction with Cinco occurred in the middle of state-court litigation where
9 an injunction had issued restricting enforcement of alleged trademark rights. Plaintiff
10 became obligated to produce these at-issue documents in January 2025 as well.

iii. **Plaintiff's First Amended Complaint Put at Issue Documents Evidencing Trade Secret Ownership, Steps Taken to Protect Trade Secrets and Sales and Use of Seasoning Packages, and They Were Responsive to Timely Discovery Requests**

14 At the March 12, 2025 hearing, Plaintiff conceded that it does not own the
15 recipes of the french fry seasonings that are the subject of its Cal-UTSA claim, which
16 was one reason it was compelled to provide a further answer to PCJV's interrogatory
17 requesting the disclosure of the alleged trade secrets. Rather, Plaintiff is apparently
18 accusing PCJV USA Parties of somehow misappropriating somebody else's trade-
19 secret recipes (recipes they never had) by "reverse engineering" the powder that was
20 in the seasoning packages, and which are sold in the market.

21 In response to timely served discovery requests, Plaintiff became obligated to
22 produce requested trade-secret documents in support of its case-in-chief, including
23 ones that would not only overcome the statutory presumption under Cal-UTSA that
24 reverse engineering does not constitute misappropriation, but also ones that support
25 its contentions that (i) it has the right to enforce somebody else's trade secrets, (ii) the
26 suppliers of seasoning packages did not sell them to others in accordance with the
27 first-sale doctrine transferring title to buyers to use them as they saw fit, (iii) both

1 suppliers and Plaintiff took reasonable steps to prevent reverse engineering when they
2 sold seasoning packages, (iv) PCJV USA Parties promised Plaintiff they would not
3 reverse engineer flavors, and (v) damages for the alleged breach of a still undisclosed
4 obligation not to reverse engineer packaged seasonings. No documents have been
5 produced supportive of this claim as well (Plaintiff has only produced SEC filings
6 and publicly released statements). Dkt. No. 196-1 ¶¶ 4-5.

7 **iv. Plaintiff Waived Objections to the Production of
8 Transactional, Trade Secret and Due Diligence
9 Documents, Not Only Because They Were Put At
Issue, But Also Because They Fall Within
Plaintiff's Initial Disclosures**

10 The requested transactional, trade-secret and due-diligence documents all fall
11 within Plaintiff's initial disclosure of documents that Plaintiff might use at trial, which
12 Plaintiff, itself, described as follows: “*Documents relating to intellectual property*
13 comprising the [allegedly acquired] Potato Corner brand,...including [a] *documents*
14 *showing Plaintiff's ownership* of the Potato Corner brand..., [b] *documents*
15 *evidencing Plaintiff's trade secrets* included within the Potato Corner Intellectual
16 Property, *protectability* of any of the Potato Corner Intellectual Property (including
17 the *maintenance of secrecy* of any confidential, proprietary, and/or trade secret
18 information)....” Dkt. No. 153-6 at 26 (emphasis added).

19 Because Plaintiff disclosed it might use at trial any document “related to
20 intellectual property” it allegedly acquired from Cinco, including documents showing
21 ownership of IP and alleged trade-secret protectability and maintenance, there was
22 no, and could be no, *bona fide* objection to PCJV’s requests for those documents.
23 Rather, after being granted extensions, Plaintiff became obligated in January 2025 to
24 produce the documents supporting its amended complaint and preliminary injunction
25 papers put at issue, including the following documents “related to intellectual
26 property” it allegedly acquired from Cinco: (a) transactional documents related to
27 Plaintiff’s case-in-chief, (b) trade-secret documents related to Plaintiff’s case-in-

1 chief, and (c) due-diligence documents related to Plaintiff's knowledge of (i) potential
2 pre-existing common law or contractual rights in PCJV relating to the allegedly
3 acquired IP, including any basis to claim trademark ownership or license rights not
4 terminable "at-will," (ii) potential obligations owed to PCJV or its joint venture
5 partners, including to grant a master license, and (iii) public sales of the allegedly
6 secret seasoning packages and prior efforts to reverse engineer packaged flavors
7 without objection by the original supplier, Cinco or Plaintiff.

8 **b. The R&R Errs in Starting the Analysis on March 12**

9 **i. Rule 26 Prohibits Parties from Holding Non-**
10 **Objectionable Documents "Hostage" While**
Objecting to Producing Other Documents

11 Plaintiff's obligation under Rule 26 was to produce in January 2025 all
12 responsive documents it had put at issue and might use at trial, and any other non-
13 objectionable documents. Under Rule 26, parties may not withhold relevant
14 documents falling within their own initial disclosures "hostage" while trying to coerce
15 compromises as to documents over which there might be *bona fide* objections. At
16 minimum, parties are to immediately produce responsive documents falling within
17 their initial disclosures, including because such production could moot the need to
18 fight about other responsive documents. *See Signature Financial LLC v. McClung*,
19 2017 WL 8236292, at *2 (C.D. Cal. July 27, 2017) (ordering plaintiff to produce
20 documents disclosed in initial disclosures because they were timely requested).

21 Plaintiff can neither claim not having enough time nor fault others for allegedly
22 not having enough time to produce (a) transactional documents, (b) trade secret
23 documents, and (c) due diligence documents. It put transactional documents at issue
24 in May and they were first requested in June 2024. It put due diligence documents at
25 issue in October by submitting declarations attesting to due diligence and trade secret
26 documents at issue in November when it amended its complaint—giving it plenty of
27 time to gather relevant documents when they were requested in December. In meet
28

and confer correspondence in January, PCJV USA Parties reiterated several times (and Plaintiff's counsel agreed) that Plaintiff was obligated to produce documents as to which there was no *bona fide* discovery dispute, such as documents falling within its initial disclosures, at which time defense counsel made clear there might be nothing left to compel or fight about. *E.g.*, Dkt. Nos. 153-11-14.

By March 12, 2025, Plaintiff already had 10 months, including since December 2024, to gather and produce documents it had put at issue and might use at trial as stated in its initial disclosure. The Court did not need a further hearing or briefing to resolve Plaintiff’s baseless objections. Rather, the Court properly resolved Plaintiff’s objections on the “spot” on March 12, 2025 (Dkt. No. 205-1 at 1.) The R&R errs in failing to address Plaintiff’s non-compliance prior to March 12 (which led to the need for the March 12 hearing in the first place).

ii. The R&R Errs by Faulting PCJV USA Parties Out of Context—Standing Plaintiff’s Request for a CMO Continuance on its Head

The R&R should not excuse Plaintiff's suppression of evidence in discovery, including failure to timely produce documents within its own initial disclosures, then fault PCJV USA Parties for initially believing Plaintiff actually wanted a trial continuance when, in reality, Plaintiff was simply delaying its discovery obligations. Rather than reopen discovery and prejudice PCJV USA Parties with a trial continuance thereby rewarding Plaintiff's dilatory conduct, the R&R should have *estopped* Plaintiff from continuing to belatedly rely upon the specter of a trial continuance as a reason to avoid sanctions and not timely producing documents. Plaintiff did not move for a continuance for three months after the March 12 conference, then waited until the eve of the June 27 hearing with the Magistrate Judge to move *ex parte* with the District Court without complying with CMO requirements. There are good reasons to believe Plaintiff just used the issue for delay and to avoid sanctions while suppressing evidence.

2. Objections re: Protective Order & Rolling Production

To facilitate Plaintiff's rolling production in March, the Court ordered counsel to file a protective order by March 14, 2025. Rather than timely file an already approved protective order, Plaintiff refused to countersign and file a protective order until March 31, 2025, then used that delay as an excuse at the April 4 hearing for not beginning the rolling production as ordered. PCJV USA Parties object to the R&R's omission of these material facts and suggestion that they were somehow at fault, or Plaintiff was excused from no rolling production.

Plaintiff's ongoing failure to comply with its discovery obligation, first in January 2025, then in March 2025 as ordered, substantiates a pattern of behavior that runs contrary to counsel's after-the-fact excuse-making. The R&R should be overruled because Plaintiff's conduct (not counsel's words) should be given more credence. Plaintiff did not substantially comply with the March 12 Order; no motion for reconsideration of the April 11 deadline was filed; and the R&R should not have accepted belated, disputed, and vague representations about compliance.

3. Objections re Plaintiff's Late-Filed Opposition

The R&R states that the Court “on its own motion, continued the [May 22] hearing to June 27, 2025 due to other ongoing discussions in this case....” (Dkt. No. 1 at 4.) PCJV USA Parties object to this description of events. The Court on its own motion took the May 22 hearing off calendar after Plaintiff delayed filing its opposition, which created overlap with “other ongoing discussions in this case.” It was PCJV USA Parties who had to email the Magistrate Judge’s Chambers to put the hearing back on calendar to enable them to file their reply, which the Magistrate Judge did not do until after “other ongoing discussions” were completed.

B. Objections re: Discussion of Rule 37(b) Motion

1. Objections re: Initial Briefing

PCJV USA Parties object that the R&R denies relief based on untimely excuses by Plaintiff’s counsel, which is reported out-of-context in the R&R,⁶ and to the extent that the March 12 and April 4 Orders were not the product of full briefing (Dkt. No. 205-1 at 6). The R&R excuses Plaintiff’s non-compliance and delay in filing an opposition after not seeking reconsideration, which caused the Court to take PCJV USA Parties’ motion off calendar, because it supposedly is “equally true that, particularly at the first discovery conference, the parties and the court may not have full appreciation and knowledge of facts that bear on the proportionality of the discovery that is ordered.” Dkt. #205-1 at 6. That is not the case here.

PCJV's document requests all concerned one singular transaction regarding Plaintiff's alleged acquisition of intellectual property put at issue in Plaintiff's complaint, preliminary injunction papers and amended complaint. There was no need for further briefing and, if more time were needed for production, the April 4 Order provided Plaintiff with the opportunity to file a motion for reconsideration provided there was substantial compliance with the March 12 Order (there was not) and good cause (not more delay). Plaintiff did not seek reconsideration of the April 11 deadline and did not substantially comply with the March 12 Order by April 11, let alone by May 9, 2025, when it belatedly filed its opposition brief.

At the March 12 hearing, the Court, for good reasons, overruled Plaintiff's discovery objections as Plaintiff was trying to suppress evidence it put at issue regarding the alleged acquisition of IP rights in the U.S. The Court authorized only limited redactions of transactional documents, including due diligence and trade secret related documents, where those documents solely concerned IP rights in other

⁶ See Dkt. No. 205-1 at 7 (“Plaintiff’s counsel in this case explains that he did not anticipate the sheer volume of electronic communications that resulted from application of the search terms after the March 12, 2025 discovery conference.”).

1 countries. At the March 12 and June 27, 2025 hearings, PCJV USA Parties’ counsel
2 (a) informed why they wanted unredacted documents, as the jury should be entitled
3 to compare any businesses Plaintiff acquired in other countries to the alleged IP rights
4 Plaintiff allegedly acquired without the franchise business in the United States, and
5 (b) made clear that Plaintiff should have, at minimum, timely produced redacted
6 documents, so that a jury could consider whether Plaintiff was suppressing evidence
7 in not permitting the jury to compare what Plaintiff purchased in other countries to
8 the U.S. IP rights it allegedly acquired. At the June 27 hearing, Plaintiff’s counsel
9 conceded that, although he could have timely produced a redacted copy of the
10 acquisition agreement, he did not do so in March or April, more than 10 months into
11 the case, presupposing PCJV USA Parties “would cry foul” concerning the amount
12 of redactions, thereby depriving PCJV USA Parties of evidence to show the jury
13 regarding Plaintiff’s suppression of evidence. (Dkt. No. 205-1 at 9.)

14 The R&R should also have overruled Plaintiff’s excuses regarding the alleged
15 amount of undisclosed documents, which nobody can verify. It lacks credibility that
16 Plaintiff—10 months into prosecution of its case after receiving in December requests
17 for documents falling in its initial disclosure, and after April 4 or when a motion for
18 reconsideration was due—supposedly realized that there were more responsive
19 documents than anticipated. Plaintiff always knew the volume of (a) documents
20 comprising the acquisition,⁷ (b) documents in its closing binder comprising the entire
21 transaction, (c) draft agreements, (d) deal correspondence, (e) due diligence from
22 Cinco, (f) its own due diligence, (g) any trade-secret due diligence, (h) board/committee
23 minutes, risk assessments, legal opinions, (i) contracts with
24 suppliers of seasoning package, (j) documents prohibiting suppliers from engaging in

25 ⁷ Defendants object to the R&R’s reference to the acquisition agreement as the “Asset
26 Purchase Agreement” or “APA.” (Dkt. #205-1 at 9.) There is no evidence that
27 Plaintiff’s transaction with Cinco was limited to the purchase of assets in the United
28 States. The R&R’s reference to one undisclosed agreement as the APA is if (a) it is
among the unfair prejudice at trial Defendants moved to avoid.

1 Internet sales or brand owners or licensees from reselling seasoning packages, (k)
2 prior enforcement against reverse engineering, and (l) damages.

3 Moreover, the time to raise any “impossibility” argument was months ago when
4 any motion for reconsideration after substantial compliance with the March 12 Order
5 was due. The Court did not need further briefing to know that in March or by April
6 11 Plaintiff had not produced any documents as ordered, and as of the date for a
7 motion for reconsideration, Plaintiff had not substantially complied with the March
8 12 Order or sought relief from the April 11 deadline to comply with the Order.

9 **2. Objections re “Beyond the Disobedient Party’s Control”**

10 The standard for willful or bad faith violation of a discovery order to warrant
11 terminating or issue sanctions, or a preclusion order, is met in this case.⁸ PCJV USA
12 Parties are entitled to an even playing field at trial; their claims and defenses have
13 been unfairly complicated and prejudiced by Plaintiff’s suppression.

14 A finding of bad faith is supported by (a) Plaintiff’s refusal to produce
15 documents in January 2025, when PCJV USA Parties still had time to take
16 depositions, followed by (b) Plaintiff’s refusal to produce documents, as ordered,
17 beginning in March and by no later than 30 days on April 11 after being compelled
18 on March 12, 2025. The R&R should be overruled to the extent it suggests Plaintiff’s
19

20 ⁸ To dismiss an action or to refuse a party from supporting or opposing designated
21 claims or defenses, terminating sanctions may be ordered when a party has engaged
22 in “disobedient conduct not shown to be outside the control of the litigant.” *Trans-*
23 Bridge Lines, Inc. v. Luxury Coach of America, LLC, Case No. 5:24-cv-00288-SPG-
24 SPx, 2024 WL 5355588, at *2 (C.D. Cal. Nov. 15, 2024) (Report and
25 Recommendation issuing terminating sanctions when party failed to produce
26 discovery pursuant to court order adopted in 2025 WL 278403); *Teixeira v. BMW of*
27 *N. Am., LLC*, Case No. 2:22-cv-02338-WLH-MAR, 2023 WL 6787457, at *1 (C.D.
28 Cal. Sept. 26, 2023). Five factors are used to determine whether to issue terminating
sanctions or the functional equivalent: “(1) the public’s interest in expeditious
resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
prejudice to the defendants; (4) the public policy favoring disposition of cases on their
merits; and (5) the availability of less drastic sanctions.” *Trans-Bridge Lines, Inc.*,
2024 WL 5355588, at *3. “[T]he key factors are prejudice and availability of lesser
sanctions.” *In re Heritage Bond Lit.*, 223 F.R.D. 527, 530 (C.D. Cal. 2024) (citation
omitted). The other three factors do not pertain to lesser sanctions. *Teixeira*, 2023 WL
6787457 at *2-9 (ordering evidentiary sanctions for violating two discovery orders).

1 suppression of evidence put at issue by its pleading and that falls within its initial
2 disclosures 10 months into the case was not in bad faith.⁹

3 A finding of willful disobedience, at minimum, is plainly supported by the
4 record. PCJV USA Parties object that the R&R does not reference, even once,
5 Plaintiff's initial disclosures or Rule 26 violation in January by refusing to produce
6 case-in-chief documents that its pleadings reference and put at issue and that it
7 represented it might use at trial. Rather than produce them, Plaintiff argued without
8 moving for a trial continuance to run the clock and delay discovery proceedings.
9 PCJV USA Parties further object that the R&R denies requested relief based on the
10 plainly erroneous suggestion that compliance with the March 12 and April 4 orders
11 were allegedly "beyond the disobedient party's control." (Dkt. No. 205-1 at 8.)
12 Several cases establish the proper relief is to impose sanctions against Plaintiff.

13 In *Yeti*, the Ninth Circuit affirmed issuance of a sanction precluding testimony
14 from an expert from testifying when that expert's report was produced twenty-eight
15 days before trial. 259 F.3d at 1105-06. Even though the sanction made is "perhaps
16 almost impossible" to rebut damages calculations, the court did not require a finding
17 that the gamesmanship was due to willfulness, fault, or bad faith. *See id.* This Court
18 should find the same and preclude documents not produced in discovery.

19 In *Sanchez v. Rodriguez*, 298 F.R.D. 460 (C.D. Cal. 2014), the District Court
20 adopted a Report and Recommendation dismissing a complaint with prejudice due to
21 the plaintiff's failure to comply with discovery obligations and a court order
22 compelling discovery. *Id.* at 463-64. There, the plaintiff did not respond to discovery,
23 was ordered to produce discovery, and belatedly responded by requesting more time
24

25 ⁹ It is wrong for the R&R (at 19) to ignore Plaintiff's statutory obligation to identify
26 its own alleged trade secrets, then to adopt Plaintiff's proffered confusion as to which
27 food or beverage items are allegedly trade secret and subject to a claim of being
28 reversed engineered, or proffered confusion as to which supplier agreements to
produce, when all responsive documents were ordered be produced on March 12,
2025. The Court set a hearing on April 4 to resolve any issues with the March 12 order
as well as invited a timely motion for reconsideration if necessary.

1 to comply. *Id.* at 464. Similarly, Plaintiff did not produce a single document before
2 the April 11 deadline (and only public filings/statements thereafter) responsive to
3 PCJV's requests for production, was ordered to produce documents, and untimely
4 stated it needs more time (over 107 days) to comply. Accordingly, the same result
5 should be provided here as was provided in *Sanchez*—terminating sanctions.

6 In *In re Heritage Bond Litigation*, defendants were ordered to produce
7 documents by a certain date to plaintiffs. 223 F.R.D. at 530. The Court found “this
8 failure clearly prejudices Betker plaintiffs by preventing them from preparing their
9 case.” *Id.* (citing *Adriana Int'l Corp. v. Theoren*, 913 F.2d 1406, 1412 (9th Cir. 1990)
10 (“Failure to produce documents as ordered ... is considered sufficient prejudice.”);
11 *Computer Task Group, Inc. v. Brotby*, 364 F.3d 1112, 1116 (9th Cir. 2004) (same)).
12 The Court found evidentiary sanctions and civil contempt were proper where minimal
13 efforts were shown to obtain responsive documents. *Id.* at 531, 533. Here, like in *In
14 re Heritage Bond Litigation*, Plaintiff has failed to comply with an Order to produce
15 documents and there is no justification for a 107-day failure to produce a single
16 compelled non-public record in this case. Even worse than in that case, Plaintiff was
17 ordered to initiate a rolling production but failed to do so and have left PCJV USA
18 Parties at the eve of trial without critical documents. Dkt. No. 196-1 at 3.

19 Cases cited in the R&R either support an issuance of sanctions or are materially
20 distinguishable from this case. *United States v. Sumitomo Marine & Fire Ins. Co.*,
21 617 F.2d 1365 (9th Cir. 1980) supports a sanctions order. That case acknowledges the
22 general rule that “neither dismissal nor preclusion of evidence that is tantamount to
23 dismissal may be imposed when the failure to comply with discovery orders is due to
24 circumstances beyond the disobedient party’s control.” *Id.* at 1369. However, the
25 Court did not follow that general rule—it affirmed the district court’s issuance of a
26 preclusion sanction after the government failed to produce court-ordered discovery
27 up until the eve of trial. *Id.* at 1370. Importantly, the Court found that the mere fact
28

1 that the court-ordered discovery was not produced up until two weeks before trial
2 presented an “unmistakable” prejudice to the defendant/counterclaimant. *Id.*

3 In contrast, the Court in *Societe Internationale Pour Participations Industrielles*
4 *Et Commerciales, S. A. v. Rogers*, 357 U.S. 197 (1958) held a Rule 37 dismissal of a
5 complaint for a failure to comply with U.S. court order to produce documents
6 unwarranted when complying with the order would subject the appellant to criminal
7 sanctions in Switzerland. *Id.* at 211-12. Dissimilarly, Plaintiff has not claimed its
8 production of documents would subject it to criminal sanctions.

9 Also dissimilar to this case, the Court in *Potlatch Corp. v. U.S.*, 679 F.2d 153
10 (9th Cir. 1982) reversed Rule 37 preclusion sanctions against the U.S. for a less than
11 two month delay in complying with an order to produce expert reports because the
12 delay was caused by a detailed explanation of administrative hurdles between
13 multiple U.S. agencies and red-tape in obtaining approval to retain experts. *Id.* at 154,
14 156. The order requiring production of the expert reports gave approximately six
15 months to comply, the U.S. obtained authority to hire the experts approximately six
16 weeks and eight weeks after the order was issued, and compliance with the order was
17 approximately delayed by seven weeks. *See id.* at p. 154-55. The timing of production
18 roughly matched up with the delay caused by the administrative hurdles in obtaining
19 approval to hire the experts, which the Court found was not the U.S.’s fault. *Id.* at
20 156. Further, the Court found the U.S. would have been prejudiced because it was
21 unable to use independent experts to show the U.S.’s IRS expert’s analysis was not
22 an “out of the ballpark” opinion. *Id.* at 157. Lastly, the Court found the prejudice to
23 appellee was minor because the appellee still had time to depose the U.S.’s experts
24 before trial and the U.S. did not disclose the appellee’s expert reports to the U.S.’s
25 experts to give an unfair advantage to prepare more for trial than appellee. *Id.*

26 *Potlatch* is inapplicable here. There were no governmental administrative
27 burdens stopping Plaintiff from complying its discovery obligations and the Court’s
28

1 Orders. PCJV USA Parties did not cause Plaintiff's failure to comply with its
2 discovery obligations or the Court's Orders. Plaintiff would not be prejudiced if
3 precluded from using documents not produced in discovery.

4 **3. Objections re: Non-Compliant April 11 Email**

5 PCJV USA Parties object to the R&R's effort (at 10) to change what was
6 ordered on March 12, 2025—which Plaintiff did not challenge and which PCJV USA
7 Parties were entitled to rely upon, including in evaluating the case for trial, and to
8 proffer a conclusion that should not be adopted. Plaintiff's April 11, 2025 email on
9 its face is non-compliant. It purports to offer a limited, conditional inspection in the
10 future (not by the April 11 deadline) of one document responsive to RFP No. 1—an
11 agreement put at issue by Plaintiff's pleading and falling within its initial disclosures
12 waiving privacy objections—without actually producing or permitting the copying of
13 any redacted documents, which is not compliant with the March 12 Order.

14 At the June 27 hearing, PCJV USA Parties supported the below reasons why the
15 R&R should be overruled and why redacted documents, including documents
16 responsive to RFP No. 1 (not just an agreement), should have been timely produced:

- 17 • Plaintiff was ordered to comply with its Rule 26 discovery obligations as
18 specified in the March 12 Order, including to complete a compelled
19 production of all responsive documents by April 11;
- 20 • Plaintiff's ordered production not only included documents and
21 communications responsive to RFP No. 1 (not just an agreement), but also
22 the production of all transactional documents, drafts, correspondence,
23 minutes, due diligence, risk assessments, *etc.*, none of which were offered
24 as part of a non-compliant inspection after the discovery deadline;
- 25 • Plaintiff was permitted to redact documents, including any agreement, as
26 specified in the Order; it was not authorized without leave of court to
27 unilaterally change or reduce its obligation to an inspection where nothing
could be copied, scanned or photographed to prepare for trial; and
- 28 • The March 12 Order overruled Plaintiff's objections, including to the
acquisition agreement; it did not invite Plaintiff to engage in non-
compliance, so as to relitigate objections to production, to transform the
March 12 Order into a limited, late and conditional inspection of one
document, and to deprive PCJV USA Parties of a redacted version of that
agreement essential to Plaintiff's case to prepare for trial.

1 After Plaintiff's suppression of evidence between January to April, PCJV USA
2 Parties responded appropriately to Plaintiff's counsel's April 11 email and failure to
3 comply with March 26 Order by proceeding with their motion for sanctions pursuant
4 to the April 4 briefing schedule. In contrast, after violating the March 12 Order when
5 it failed to begin a rolling production in March and failed to produce any documents
6 by April 11, Plaintiff did not follow the briefing schedule, let alone seek
7 reconsideration of its obligations based on a showing of substantial compliance.

8 **C. Objections re: Remedies Recommended (Which PCJV USA Parties
9 did Not Request) Rather Than Requested Remedies**

10 **1. Preclusion Order**

11 The R&R does not address the very first request for relief in PCJV USA Parties'
12 Notice of Motion (at 2 ¶ 1) designed to prevent unfair surprise and prejudice at trial
13 which is routinely and commonly issued in response to a party's failure to produce
14 documents in discovery, including before initial pre-trial filings and before a post-
15 discovery mandatory settlement conference—whether or not in violation of a court
16 order: "Prohibiting Plaintiff from supporting its claims for trademark infringement
17 with any documents responsive to RFP Nos. 1-27."

18 Instead of addressing unfair surprise at trial and a preclusion order supported by
19 the record, the R&R recommends relief that was not requested. That relief would
20 cause further delays, unfairly prejudice PCJV USA Parties with a trial continuance
21 and ongoing and mounting losses of revenue and goodwill. Meanwhile, the
22 preliminary injunction would remain, causing more expense to overturn, when
23 Plaintiff made the decision prior to April not to produce documents in discovery.
24 Plaintiff should not benefit from its refusal to satisfy its Rule 26 obligations. To
25 prevent trial by ambush and avoid further delays, responsive documents not produced
26 in discovery in this action, in the preliminary injunction proceedings, or in the state
27 court action involving the same parties, should be excluded from the trial.

2. Objections re: Transaction Related Issue/Evidentiary Sanctions

Under different headings, the R&R (at 9-10 and 12) quotes issue or evidentiary sanctions taken from PCJV’s Notice of Motion (but omits the overlapping issue sanctions in the supporting memorandum), regarding what PCJV USA Parties expected the willfully suppressed evidence would prove as supported by PCJV USA Parties’ motion, reply and Flow Chart re: Superior Trademark Rights.¹⁰ PCJV USA Parties object to the R&R’s failure to address PCJV USA Parties’ arguments; the R&R just repeats Plaintiff’s unsupported, conclusory argument.

The non-monetary sanctions set out below are necessary and appropriate to even the playing field for trial and compensate PCJV USA Parties for the loss of evidence, including impeachment evidence. Plaintiff specifically refused, time and again, to comply with its discovery obligations, including court orders, with the expressed purposes of complicating PCJV USA Parties' case and confusing the jury—which is the theme this Court has heard from Plaintiff's counsel at numerous hearings:

- *That Plaintiff did not acquire U.S. trademark rights in PCJV, whether owned or licensed by PCJV, or co-owned by PCJV's foreign and domestic joint venture partners.*

This issue sanction is on point, supported, and should be granted: Cinco obviously could not assign to Plaintiff trademark rights Cinco did not own or, in fact, did not sell to Plaintiff. Because this sanction tracks Plaintiff’s CEO’s own declaration that Plaintiff did not acquire any “rights...in PCJV” (Dkt. No. 44-4 ¶ 12), it would support Plaintiff’s own CEO’s theory.

Plaintiff has suppressed evidence both acknowledging that Cinco could not sell rights belonging to PCJV and revealing whether Plaintiff, in fact, acquired branding

¹⁰ Defendants' flow chart highlights critical issues raised in the motion upon which Plaintiff has suppressed relevant evidence—making visual the obvious prejudice to Defendants' defense at trial, including because they now need to address issues and alternative theories based on what the suppressed evidence would have revealed, including as to Plaintiff's knowledge of each of these issues in 2022.

1 rights in PCJV, whether owned or licensed by PCJV, or co-owned by PCJV's
2 partners. Plaintiff suppressed evidence that it knew it could not acquire from Cinco
3 that which Cinco did not own and did not, in fact, sell to Plaintiff, including rights
4 and obligations in PCJV's governing documents. As to who has superior
5 trademark rights, including ownership of the U.S. Potato Corner marks, it should be
6 established for trial that, not only did Cinco not sell any ownership rights belonging
7 to PCJV, but also did not sell any licensing rights under PCJV's governing
8 documents, which Cinco sold to Koren in settling the state-court action.

9 • *That Plaintiff did not acquire any ownership or licensing rights of
10 PCJV or PCJV's foreign or domestic joint venture partners.*

11 Similar to the first issue sanction, this sanction seeks to make clear to the jury
12 that Plaintiff neither acquired PCJV nor PCJV's rights (or PCJV's partners' co-
13 ownership rights) in the U.S. Potato Corner franchise system that licensed the U.S.
14 marks to U.S. franchisees, including PCJV-affiliated and third-party franchisees. The
15 R&R should be overruled because the trademark rights owned or licensed by the
16 PCJV to operate Potato Corner USA were not acquired by Plaintiff as established by
17 its suppression of evidence.

18 • *That any proffered evidence regarding Plaintiff's purchase
19 agreement with Cinco [/] regarding the trademark ownership or
20 licensing rights and obligations of PCJV or PCJV's domestic joint
venture partners under the written agreements signed by PCJV or
PCJV's domestic joint venture partners are immaterial and
inadmissible.*

21 This evidentiary sanction seeks the preclusion of any proffered evidence,
22 including testimony, about what the suppressed evidence, including the acquisition
23 agreement, allegedly means or says—in particular as to whether Plaintiff acquired a
24 superior claim to trademark ownership free and clear of PCVJ's branding or licensing
25 rights or obligations at common law or under PCJV's governing documents. Having
26 suppressed relevant evidence, including all transactional documents, due diligence,
27 risk assessments and legal opinions (which should have, at minimum, been put on a

1 privilege log), Plaintiff should not be allowed to engage in unfair surprise or testify
2 about legal documents having suppressed evidence in discovery.

3

- 4 *That Plaintiff knowingly acquired U.S. registrations and U.S.*
5 *trademark rights, if any, covering the trademarks used by PCJV and*
6 *the Potato Corner USA franchise system subject to any and all prior*
7 *common law and contractual rights of PCJV or PCJV's domestic*
8 *joint venture partners.*

9 This issue sanction is on point and supported too: Plaintiff suppressed due
10 diligence conducted in the middle of litigation between Cinco and PCJV USA Parties
11 after attaching pre-existing contracts to the complaint. Whatever trademark rights
12 Plaintiff acquired in the United States are subject to those preexisting contracts.
13 Knowledge of those contracts is an element of PCJV USA Parties' claims for tortious
14 inference with contracts and contractual relations and aiding and abetting Cinco's
15 breach of fiduciary obligations to PCJV and its partners. The suppressed evidence,
16 including acquisition agreement, due diligence, risk assessments and legal opinions,
17 would have established Plaintiff's knowledge of PCJV's pre-existing contracts,
including the reasons why the state court issued an injunction enjoining any effort to
enforce trademark rights against PCJV and its Potato Corner USA franchise business
as admitted in Plaintiff's complaint. The R&R should be overruled.

18

- 19 *That the consideration Plaintiff paid for Cinco's international rights*
20 *to the Potato Corner trademark portfolio reflected the risk and*
21 *expense of litigation over whether PCJV and PCJV's domestic joint*
22 *venture partners had superior rights to use and/or control the use of*
23 *the Potato Corner trademarks in the United States for more than 20*
24 *years pursuant to the terms of written agreements signed by PCJV*
25 *or PCJV's joint venture partners.*
- 26 *That Plaintiff did not pay Cinco adequate consideration for U.S.*
27 *registrations and U.S. trademark rights, if any, covering the marks*
28 *used by PCJV and the Potato Corner USA franchise system.*

29 The R&R's proffered confusion about why these issue sanctions directly flow
30 from Plaintiff's suppression of evidence, including the acquisition agreement,
31 negotiation related thereto, due diligence and risk assessment, lacks merit and should
32 be overruled too. Plaintiff has suppressed evidence as to (a) what it paid, if anything,

1 to Cinco for U.S. trademark rights—or whether it simply assumed the burden of
2 litigating against PCJV and its domestic partners, (b) whether Cinco made any
3 representation or warranties to Plaintiff about the United States—or whether any
4 trademark rights in the United States were sold “as-is, where is,” and (c) whether
5 Cinco owed Plaintiff indemnity if Plaintiff lost in litigation against PCJV or its
6 domestic partners—or whether Plaintiff indemnified Cinco if Cinco got dragged into
7 the lawsuit against PCJV and its domestic partners. Neither PCJV USA Parties nor
8 the Court should have to waste time establishing the general principles or the
9 underlying facts suppressed in discovery by Plaintiff in violation of court orders.

10 • *That Plaintiff had full knowledge of PCJV’s franchise agreements
11 with third-party U.S. franchisees, including full knowledge that
12 those agreements were approved by both the foreign and domestic
13 joint venture partners of PCJV for PCJV’s benefit.*

14 Plaintiff suppressed evidence bearing directly on damages. But for Plaintiff’s
15 tortious conduct in allegedly acquiring trademark ownership of the U.S. Potato Corner
16 marks with the alleged right to terminate PCJV’s Potato Corner USA franchise
17 system’s use of those marks, including the right of PCJV’s affiliated and third-party
18 franchisees to use the marks, Plaintiff still has undisrupted relationships with its
19 former third-party U.S. franchisees. The suppressed evidence is directly relevant to
20 establish Plaintiff’s knowledge and, indeed, the very purpose of Plaintiff’s acquisition
21 of U.S. trademark rights—to usurp PCJV USA Parties’ franchise business.

22 **3. Objections re: Trade Secret Claim**

23 The R&R did not address PCJV USA Parties’ request for a terminating sanction
24 as to Plaintiff’s trade secret claim, which was based on Plaintiff’s failure to produce
25 any documents relevant to this claim, including documents within its initial
26 disclosures, in violation of court orders. Plaintiff had multiple opportunities to support
27 its case-in-chief with documents. Because Plaintiff cannot meet its burden of proof
28 without the willfully suppressed evidence, a terminating sanction is appropriate.

1 The R&R did address PCJV USA Parties' request for the below issue sanctions
2 pertaining to the elements of Plaintiff's Cal-UTSA claim to even the playing field and
3 to compensate PCJV USA Parties for the loss of evidence, including impeachment
4 evidence, if Plaintiff's trade-secret claim is not dismissed:

5 • *That the contents and labeling of the flavored seasoning packages are*
6 *not trade secrets, including because they are publicly available and*
7 *purchased by third parties.*

8 • *That Plaintiff has not taken reasonable steps to maintain the alleged*
9 *secrecy of the contents or labeling of the flavored seasoning packages.*

10 • *That Plaintiff does not own or possess the alleged trade secret recipes or*
11 *ingredient allocations of the flavored seasoning packages.*

12 • *That Plaintiff has not been damaged as a result of competition mimicking*
13 *the flavors of the flavored seasonings.*

14 The R&R provides no explanation (there is none), however, why Plaintiff's
15 refusal to produce documents within its initial disclosures in violation of a court order
16 should result in further delays to reopen discovery to produce documents a month
17 before trial. Thus, in addition to a preclusion order to prevent unfair surprise, because
18 Plaintiff cannot fairly rebut the above factual conclusions without the suppressed
19 evidence, the above issue sanctions are appropriate.

20 **D. Objections re: Document Requests**

21 **1. Document Request No. 1**

22 PCJV USA Parties object to the R&R insofar as it is unclear that RFP No. 1
23 does not request one agreement, but seeks all documents and communications
24 referring to or evidencing the acquisition agreement. Counsel's email offering a post-
25 discovery inspection of one responsive document without the right to copy a redacted
26 version did not comply with the March 12 Order.

27 PCJV USA Parties object to the unduly prejudicial and likely illusory remedy
28 the R&R recommends in response to Plaintiff's failure to produce copies of all
responsive documents and communications referring to or evidencing the agreements
related to the sale of Potato Corner assets, including the documents comprising

1 Cinco's transaction with Plaintiff. First, further delaying this proceeding and
2 expiration of the preliminary injunction by reopening discovery and increasing the
3 expense of this proceeding would be unduly prejudicial to PCJV USA Parties.

4 Second, because of the prejudice, the remedy offered is not one PCJV USA
5 Parties sought. In addition to further delays, it would merely invite more litigation
6 over PCJV USA Parties' right to use a redacted agreement at trial. PCJV USA Parties
7 should not be made worse off as a result of Plaintiff's willful discovery violation.

8 Third, the proffered remedy does not comport with Plaintiff's discovery
9 violation, including failure to produce in discovery the acquisition agreement it put at
10 issue in May 2024, which was requested in June 2024, and which it was obligated to
11 produce by January 2025, when there remained time to conduct depositions.
12 Obviously, Plaintiff have little interest in the R&R's invitation to see what is behind
13 "Curtain No. 1" in a game of "Let's Make a Deal," not hosted by Monte Hall, but by
14 the party in violation of court orders and guilty of suppressing evidence, who would
15 control what is made available for inspection or production. It is unfair to reward
16 Plaintiff after it suppressed evidence that should have been produced by January, to
17 control potential evidence at trial. Neither PCJV USA Parties nor the Court should
18 accept the spoiler's word that spoliation is not what is occurring on the eve of trial.

19 **2. Document Request Nos. 9, 12 and 25**

20 PCJV USA Parties object to the R&R because the only documents produced by
21 Plaintiff were public filings or statements responsive to RFP Nos. 8, 14 and 19. As
22 made clear at the June 27, 2025 hearing, Plaintiff did not produce any documents that
23 were not already in the public record. Dkt. No. 196-1 ¶ 4.

24 For example, Plaintiff did not produce any let alone all responsive documents
25 to RFP Nos. 9, 12 and 25. Plaintiff's opposition did not refer to any Bates Nos. or
26 provide any examples any responsive documents allegedly produced in discovery. It
27 simply provided a conclusory statement by counsel engaged in discovery violations

1 without any verification or privilege log from Plaintiff that all documents responsive
2 to RFP Nos. 9, 12 and 25 were produced or accounted for in a privilege log.

3 To be sure, at the June 27 hearing, PCJV USA Parties specifically identified
4 Plaintiff's lone belated production of public filings on April 12, 2025. In response,
5 Plaintiff's counsel referred to a phantom second production of documents (that never
6 occurred) and as to which Plaintiff's counsel at the June 27 hearing could not provide
7 any evidence or bates label range of numbers to substantiate ever occurring. The
8 R&R's recommendation to deny PCJV USA Parties' motion for sanctions without a
9 verification from Plaintiff or substantiation that all documents responsive to RFP Nos.
10 9, 12 and 25 have been produced should be overruled.

11 **3. Document Requests re: Group 1**

12 PCJV USA Parties object to the R&R's proffered grounds and recommendation
13 as to the documents in Group 1 as Plaintiff's conduct (not words) should control the
14 Court's Order. Plaintiff did not move for reconsideration of the April 11 deadline—
15 let alone to narrow its obligations under the March 12 Order as the R&R (at 16-18)
16 now recommends—after supposedly “realizing” there were more documents than
17 anticipated to review and produce or put on a privilege log. Plaintiff also did not do
18 any of those things four months later by June 27, 2025. Failing to produce any
19 documents in Group 1 a month before trial utterly belies Plaintiff's counsel's excuses
20 for non-compliance with the March 12 Order, which, one month before trial, are
21 immaterial and do not constitute substantial compliance.

22 **4. Document Requests re: Group 2**

23 The R&R seems to acknowledge that Plaintiff has produced no “documents
24 underlying Plaintiff's damages claims based on misappropriation” (Dkt. No. 205-1 at
25 19). Here, Plaintiff's counsel stated at the July 27 hearing that Plaintiff only produced
26 public filings. He made no showing that the public filings disclosed financial
27 information relating to the alleged misappropriation (they do not), let alone amounted
28

1 to anything more than conclusory, vague and out-of-context numbers for the entire
2 company, not just to the United States. Therefore, both preclusion and issue sanctions
3 related to damages (as opposed to disgorgement) are entirely appropriate.

4 Moreover, the R&R ultimately concedes that nothing prevented compliance
5 with the March 12 Order. Other than financial records Plaintiff does not have (or still
6 refuses to produce), the R&R simply repeats what Plaintiff was already ordered to
7 produce on March 12: “[T]he flavorings at issue in the CUTSA claim [*i.e.*, what
8 Plaintiff contends is trade secret without discovery from PCJV USA Parties]; and the
9 agreements described in Paragraph 3(e)(i) in the March 12, 2025 Order.” Dkt. No.
10 205-1 at 20. There is no justification why these documents were not already produced
11 by January, March or April, 2025, let alone by June 27, 2025.

12 **5. Document Requests re: Group 3**

13 Group 3 documents comprise all documents and communications related to the
14 U.S. franchisees (RFP No. 21), who now, in seemingly joining Plaintiff’s
15 organization, are claiming they were defrauded by PCJV. PCJV USA Parties object
16 to the R&R (at 20) because Plaintiff’s failure to produce documents in response to
17 RFP No. 21 is relevant to both issue and evidentiary sanctions. Plaintiff suppressed
18 evidence of Plaintiff’s knowledge prior to the 2022 transaction as to whether Cinco
19 had “at-will” termination rights to disrupt PCJV’s relationship with third-party
20 franchisees. Similarly, Plaintiff’s suppression of evidence is relevant to Plaintiff’s
21 tortious interference with PCJV’s relationship with its franchisees. The suppression
22 of relevant subsequent conduct—here Plaintiff’s inducement of U.S. franchisees to
23 join its organization and accuse PCJV of fraud as grounds to rescind franchisee
24 agreements—supports the requested issue sanctions bearing on Plaintiff’s knowledge
25 of whether they acquired “at-will” termination rights. After not producing documents
26 and communications in response to RFP No. 21, including any privilege log, Plaintiff
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1 should not be permitted to deny that they knew they did not have “at-will” termination
2 rights, and thus knew they tortiously interfered with PCJV’s relationships.

3
4 DATED: July 7, 2025

BLANK ROME LLP

5
6 By: /s/ Todd M. Malynn

7 Todd M. Malynn

8 Arash Beral

9 Jamison T. Gilmore

10 Attorneys for Defendants, Counterclaimants,
11 and Third Party Plaintiffs PCJV USA, LLC,
12 PCI TRADING LLC, POTATO CORNER,
13 LA GROUP, LLC, GK CAPITAL GROUP,
14 LLC, NKM CAPITAL GROUP, LLC and
15 GUY KOREN, and Defendants J & K
16 AMERICANA, LLC, J&K LAKEWOOD,
17 LLC, J&K OAKRIDGE, LLC, J&K
18 VALLEY FAIR, LLC, J & K ONTARIO,
19 LLC, J&K PC TRUCKS, LLC, HLK
20 MILPITAS, LLC, and GK CERRITOS,
21 LLC

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CERTIFICATE OF SERVICE
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The undersigned certifies that on July 7, 2025, the foregoing document was
electronically filed with the Clerk of the Court for the United States District Court,
Central District of California, using the Court's Electronic Case Filing (ECF)
system. I further certify that all participants in the case are registered CM/ECF
users and that service will be accomplished by the CM/ECF system.

8
I certify under penalty of perjury that the foregoing is true and correct.
9
Executed on July 7, 2025.

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11 By: /s/AJ Cruickshank
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